

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

## ORDER

Pursuant to the Court's Order dated January 26, 2012, Defendants Freeburg Community Consolidated School District No. 70, Clarence Haege and Lawrence Meggs produced certain transcribed audio recordings of closed session board meeting minutes requested by Plaintiff, dated 2007 to the present, together with Fifth and Sixth Supplemental Privilege Logs. The Court has reviewed the documents *in camera* and hereby **ORDERS** the following:

NATURE OF THE RECORD	BATES NO.	PRIVILEGE ASSERTED BY DEFENDANTS	RULING
School Board Closed Session Verbatim Recording, May 19, 2008	FSD 4738- 4792	<p><u>Family Education Rights &amp; Privacy Act (FERPA), 20 U.S.C. §1232(g) / ISSRA (Illinois School Student Record Act)</u></p> <p><i>105 ILCS 10/1 <i>et seq.</i> - Subject to prior order of Court which denied privilege</i></p> <p>Appears to be inadvertent discussion prior to closed session beginning; however, contains privileged information as there are names of individuals, including probable student name/family name that could lead to identity of student. FSD 4739 lines 13, 15, 16, 18, 21, and 22</p> <p>FSD 4741 line 5 – 4745. Discussion of how to handle a particular student during graduation due to student's</p>	<p>These documents shall be produced subject to the Court's Protective Order dated October 27, 2010, and the Courts prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs. 25, 44, 47</i></p>

		<p>disability</p> <p>FSD 4777. Referencing parent name and student name</p> <p>FSD 4778 line 20-23 – student identified by name</p> <p>FSD 4780 line 19 – identifies student by first name</p> <p>FSD 4781 lines 5-6, 12, 16-21. – identifies students by name</p> <p>FSD 4783 line 19 – identifies student by name</p> <p><u>Federal Deliberative Process</u> – <i>Subject to prior order of Court which denied privilege</i></p> <ul style="list-style-type: none"> <li>- retirement of staff member - FSD 4740 – 4741 line 4</li> <li>-</li> <li>Employment/compensation/performance of teachers re: learning lab – FSD 4741 line 5 – 4771 line 13</li> <li>Employment – facilitator position – FSD 4748 line 18 – 4763 line 17</li> </ul>
School Board Closed Session Verbatim Recording, February 23, 2009	FSD 4793- 4818	<p><u>Attorney-Client Privilege</u> – FSD 4794-4818. On-going litigation matter discussed, as well as advice relative to a FOIA request. Attorney present for duration of closed session meeting</p>

School Board Closed Session Verbatim Recording, April 16, 2009	FSD 4819- 4906	<u>Attorney-Client Privilege</u> – FSD 4820 – 4906. Discussion of allegations against Dr. Hawkins. Attorney present for duration of closed session meeting	These documents shall not be produced as they are protected by the Attorney- Client privilege
School Board Closed Session Verbatim Recording, April 27, 2009	FSD 4907- 4938	<u>Federal Deliberative Process</u> - employment matters – search for new superintendent – FSD 4908 – 4918, line 5;  - employment matters – search for new tech person, FSD 4918 line 5 – 4928 line 7.  <u>Attorney-client/pending litigation matter</u> – discussion of information provided by attorney re: potential settlement of matter– FSD 4933 line 2	These documents shall be produced subject to the Court's Protective Order dated October 27, 2010, and the Courts prior rulings dated August 1, 2012 and August 3, 2012  <i>See Docs.</i> 25, 44, 47
School Board Closed Session Verbatim Recording, May 3, 2009	FSD 4939- 5009	<u>Attorney-client privilege</u> – Discussion of death of Dr. Hawkins and continuing investigation by police/state's attorney's office discussed – FSD 4940 – 4949. Attorney present for this portion of closed session meeting  <u>Federal Deliberative Process</u> - <i>Subject to prior order of Court which denied privilege</i>  Personnel matter – appointing interim superintendent – FSD 4950 line 7 – 4956 line 24; FSD 4980 line 7 – 4981 line 7;  Personnel matter – search for future superintendent – FSD 5000 line 5 – 5001 line 18  Personnel matter – discussion of who will address students' and teachers' concerns and reactions to	FSD 4940 through 4950, line 6 shall not be produced as they are protected by the Attorney- Client privilege  All other documents shall be produced subject to the Court's

		<p>death of Dr. Hawkins and who will report death of superintendent to students and district employees and information to be provided; FSD 4962 line 11 – 4972 line 16; FSD 4975; FSD 4981 line 8 – 5000 line 15; FSD 5001 line 19 – 5003, line 5</p> <p><u>FERPA/ISSRA</u> - <i>Subject to prior order of Court which denied privilege</i> - Identity of student or former student prohibited –FSD 4940 line 24</p> <p><u>Personal/Private Information</u> – Cell phone number of employee/board member – FSD 4998 line 21</p> <p>- Board member cell phone number- FSD 4999, line 2</p>	<p>prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs. 44, 47</i></p>
School Board Closed Session Verbatim Recording, May 13, 2009	FSD 5010-5055	<p><u>Federal Deliberative Process</u> - <i>Subject to prior order of Court which denied privilege</i></p> <p>- Personnel matter – recommendation for hiring of tech person. FSD 5011 line 2 – 5020 line 22</p> <p>- Personnel matter – social worker needs/overlap with other duties and responsibilities/and other staffing needs for next school year. FSD 5020 line 23 – 5050 line 19</p> <p><u>HIPPA &amp; Personal Privacy Issues</u> – <i>Subject to prior order of Court which denied privilege</i></p> <p>Discussion of medical condition of husband of district employee – FSD 5029 line 19 – 5030 line 1</p>	<p>These documents shall be produced subject to the Court's prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs. 44, 47</i></p>
School Board Closed Session Verbatim Recording, June 22, 2009 (Part I)	FSD 5056-5103	<p><u>Federal Deliberative Process</u> - <i>Subject to prior order of Court which denied privilege</i></p> <p>- Letter of resignation of employee. FSD 5060 line 7 – 5060 line 2</p> <p>- Retirement letters from two employees effective the end of 2011-12 school year discussed – FSD 5061 line 1 – 5061 line 14</p> <p>- Maternity leave of two individuals discussed, including expected return dates for both employees FSD 5061 line 15 – 5062 line 7; FSD 5062 lines 22-23</p>	<p>These documents shall be produced subject to the Court's prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs.</i></p>

		<ul style="list-style-type: none"> <li>- District's need for social worker discussed and possibility of staffing via contract rather than employing part-time person– FSD 5062 lines 9 – 21</li> <li>- Application for head Girl's Basketball coach discussed. – FSD 5062 line 24 – 5063 line 11</li> <li>- Staffing needs for upcoming school year discussed including recommendations for employment of four certificated personnel based on enrollment projections and staffing needs. FSD 5063 line 12 – 5091 line 12</li> <li>- Recommendations for reemployment of various teacher assistants discussed. FSD 5091 line 13 -5098 line 8</li> </ul>	44, 47
School Board Closed Session Verbatim Recording, June 22, 2009 (Part II)	FSD 5104-5157	<p><u>Federal Deliberative Process - Subject to prior order of Court which denied privilege</u></p> <ul style="list-style-type: none"> <li>- Discussion of non-certified salary discussed and proposed non-certified salary increases. FSD 5105 line 2 – FSD 5113 line 24</li> <li>- Discussion of salary increases for certain administrators discussed. FSD 5114 - 5151 line 24</li> </ul>	<p>These documents shall be produced subject to the Court's prior rulings dated August 1, 2012 and August 3, 2012.</p> <p><i>See Docs. 44, 47</i></p>
School Board Closed Session Verbatim Recording, July 27, 2009 (Minutes from this session incorrectly identify date as June 22, 2009)	FSD 5316-5376	<p><u>Federal Deliberative Process - Subject to prior order of Court which denied privilege</u></p> <ul style="list-style-type: none"> <li>- Discussion of property that district would bid on at public auction. FSD 5322 line 19 – 5355 line 12</li> <li>- Discussion re: matter involving memorial service for Dr. Hawkins and complaints relative to same and how to handle same FSD 5355 line 13 – 5370 line 18</li> <li>- Review of closed session minutes. FSD 5370</li> </ul>	<p>These documents shall be produced subject to the Court's prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs.</i></p>

		line 19 – 5371 line 1	44, 47
School Board Closed Session Verbatim Recording, August 24, 2009	FSD 5158- 5191	<p><u>Federal Deliberative Process - Subject to prior order of Court which denied privilege</u></p> <p>- Discussion relative to signing Special Education Plan over union's concern in doing so without providing grievance procedure if Plan is violated. FSD 5159 – 5165 line 13</p> <p>- Discussion of pending real estate sale/purchase</p> <p>- Pending real estate matter re: taxes to be considered in sale FSD 5165 line 15–5166 line 7</p> <p>- Citizen complaint re: hiring of new superintendent and perceived dragging of feet by board in superintendent search. FSD 5180 line 21 – 5186 line 24</p> <p><u>Attorney-client privilege:</u></p> <p>- Update on pending litigation matters – FSD 5166 line 16 – 5168 line 19</p> <p>- Update on pending litigation/potential litigation matters re: Dr. Hawkins– FSD 5170 line 15</p> <p>- Update on pending litigation matters – FSD 5177 lines 18, 23-24; FSD 5178 lines 1-2, 20; FSD 5179 lines 2-5; FSD 5180 lines 13-20</p> <p><u>FERPA/ISSRA - Subject to prior order of Court which denied privilege</u></p> <p>- Discussion of litigation matter that discusses family name and student name. FSD 5177 line 18 – 5180 line 21</p> <p>- Discussion of name of former students and family name of former students – FSD 5169 – 5177</p>	<p>FSD 5166, line 16 through 5168 and FSD 5180, lines 13 through 20 shall not be produced as they are protected by the Attorney- Client privilege</p> <p>All other documents shall be produced subject to the Court's prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs.</i> 44, 47</p>
School Board Closed Session Verbatim Recording, November 23,	FSD 5192- 5249	<p><u>Federal Deliberative Process - Subject to prior order of Court which denied privilege</u></p> <p>- Direction in terms of search for new</p>	<p>FSD 5237, lines 19 and 20; FSD 5238, lines 14 through</p>

2009		<p>superintendent. FSD 5193 – 5236 line 10</p> <p><u>Attorney-client privilege</u></p> <p>- Discussion of FOIA request made by Belleville News-Democrat related to Dr. Hawkins and the school district's attorney's advice relative to same FSD 5237 lines 19-20; FSD 5238 lines 14-23; FSD 5239 lines 5-8</p>	<p>23; and FSD 5239, lines 5 through 8 shall not be produced as they are protected by the Attorney-Client privilege</p> <p>All other documents shall be produced subject to the Court's prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs. 44, 47</i></p>
School Board Closed Session Verbatim Recording, May 24, 2010	FSD 5250-5315	<p><u>Federal Deliberative Process - Subject to prior order of Court which denied privilege</u></p> <p>- Retirement letters from employees – FSD 5251 line 7 – 5252 line 10</p> <p>- Rehire certain staff - FSD 5252 lines 11-15</p> <p>- Approval of principal contract - FSD 5252 line 15 – 5263 line 2</p> <p>- Discussion of proposed non-certified pay increases - FSD 5263 line 3 – 5266 line 5; FSD 5290 line 3 – 5294 line 8</p> <p>- Staffing needs for school nurse - FSD 5266 line 6 – 5289</p> <p>- Discussion of injury to employee while at work - FSD 5290 lines 1-2 (redact name) ; FSD 5294 line 9 – 5295 line 12 (redact name)</p>	<p>These documents shall be produced subject to the Court's prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs. 44, 47.</i></p>

		<ul style="list-style-type: none"> <li>- Employee discipline matter; investigation re: charges - FSD 5295 line 13 – 5302 line 21.</li> <li>- Employee discipline matter and Attorney-client privileged – potential litigation matter where employee injured at work FSD 5302 line 22 – 5306 line 14</li> <li>- Maternity leave – FSD 5306 line 15 – 5307 line 1</li> <li>- real estate matter – quit claim deed – FSD 5307 line 2 – 5308 line 22</li> </ul> <p><u>Privacy Issues:</u></p> <ul style="list-style-type: none"> <li>- Discussion re: mental health issues related to teacher – FSD 5302 line 22 – 5306 line 14.</li> <li>- FSD 5266, lines 11-13</li> </ul> <p><u>HIPAA</u> – discussion re: employee injured at work, discussing type of injury. FSD 5290 lines 1-2; FSD 5294 line 9 – 5295 line 12</p>	
School Board Closed Session Verbatim Minutes, June 28, 2010	FSD 5399- 5439	<p><u>Federal Deliberative Process</u> – <i>Subject to prior order of Court which denied privilege</i></p> <ul style="list-style-type: none"> <li>- Teacher's request for leave of absence – FSD 5412 line 9 – 5416 line 15.</li> <li>- Discussion of hiring possibilities for replacement for teacher requesting leave of absence – FSD 5414 line 12 -5416 line 15.</li> <li>- Letter of retirement received from employee, potential replacement, and pay to retiring teacher for training replacement on part-time basis after retirement – FSD 5416 line 16 – 5431 line 17</li> <li>- Salary increases for non-certified staff and discussion of upcoming collective bargaining with certified staff – FSD 5431 line 18 – 5434 line 18</li> </ul> <p><u>HIPAA/PRIVACY ISSUES</u> -<i>Subject to prior order of Court which denied privilege</i></p> <ul style="list-style-type: none"> <li>- Discussion of medical condition of husband of teacher requesting leave of absence– FSD 5412 line 11</li> </ul>	<p>These documents shall be produced subject to the Court's prior rulings dated August 1, 2012 and August 3, 2012</p> <p><i>See Docs. 44, 47</i></p>

	<p><u>Family Education Rights &amp; Privacy Act (FERPA)</u>, 20 U.S.C. §1232(g) –</p> <p>- identification of former student at FSD 5402, lines 4, 5, 6, and 9.</p> <p><u>Illinois School Student Records Act</u>, 105 ILCS 10/2 –</p> <p>– Same privileges as claimed in FERPA, immediately above.</p>	
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Based upon the foregoing, Defendants are hereby **ORDERED** to produce the documents consistent with this Order no later than **May 11, 2012**.

**IT IS SO ORDERED.**

**DATED:** April 30, 2012



**DONALD G. WILKERSON**  
United States Magistrate Judge